

OPP. 5/25



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

AMERICAN RED CROSS, HEART OF
AMERICA BLOOD SERVICES REGION

Employer¹

and

Case 33-RC-5033

AFSCME (THE AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES) COUNCIL 31

Petitioner

REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION

The Employer collects, manufactures, and distributes blood products in various counties located in Illinois, Iowa, and Missouri. Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of approximately 175 employees employed in the Employer's Donor Services department, here referred to as "collections employees."² A hearing officer of the Board held a hearing and the parties have filed briefs.

As evidenced at hearing and in the briefs, the parties disagree on two issues: (1) whether the 40 team leaders are supervisors; and (2) whether the 2 collections support specialists should be included in the unit. I previously considered these issues in my decision that issued on December 15, 2005 in Cases 33-RC-4947 and 33-RC-4948 involving the same

¹ Employer's name appears as amended at hearing.

² Petitioner seeks a unit that includes the following classifications: All full-time, part-time and per diem collections specialists I, collections specialists II, collections technicians I, collections technicians II, mobile unit assistants I, mobile unit assistant I/collections specialists I, mobile unit assistant I/collections technicians I, mobile unit assistants I/CTI-HH, mobile unit assistants II, mobile unit assistant II/collections specialists I, mobile unit assistants II/CTI-HH, mobile unit supply clerks, collections assistant, and team leaders employed by the Employer in its Donor Services department, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act and all other employees.

employees and Employer, but a different Petitioner. In that decision (hereafter referred to as DDE), I found that the team leaders were not supervisors and I allowed the collections support specialist to vote subject to the challenge procedure. At the instant hearing, both Employer and Petitioner agreed that the facts set forth in the transcript and exhibits were accurate as of the time of that hearing and that the instant hearing would simply supplement that record and reflect events occurring since the time of the first hearing. Accordingly, I take administrative notice of the transcript, exhibits and DDE in Cases 33-RC-4947 and 33-RC-4948. The parties agree that the petitioned-for unit is appropriate except for the unit placement of the team leaders and the collections support specialists.

With respect to the supervisory status of the team leaders, Petitioner argues that the record does not provide a basis for departure from the prior DDE. The Employer contends that a different outcome is warranted because the team leaders' duties have evolved and because of the Board's decisions in *Oakwood Health Care, Inc.*, 348 NLRB No. 37 (2006), *Croft Metals*, 348 NLRB No. 38 (2006), and *Golden Crest Healthcare Center*, 348 NLRB No. 39 (2006). As for the second issue, Petitioner does not seek to represent the collections support specialists and contends that they do not share a sufficient community of interest with the collections employees so as to compel their inclusion in the unit. The Employer contends that the collections support specialists share a compelling community of interest with the collections employees and therefore must be included in the unit.

I have carefully considered the evidence and arguments presented by both parties on the issues. As discussed below, I conclude that the team leaders are not supervisors and that the collections support specialists are properly excluded from the unit. There are approximately 175 employees in the unit sought by Petitioner, 137 employees in the unit sought by the Employer, and 175 employees in the unit found appropriate here.

I. OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer is an unincorporated operating unit of the American National Red Cross with a region encompassing more than half the State of Illinois and parts of Iowa and Missouri.³ The Employer recruits donors, collects their blood, manufactures various blood products, and distributes those products to a clinic and approximately 42 hospitals located throughout its region. The Employer's headquarters are located in Peoria, Illinois. The Employer also has approximately 10 fixed blood drive sites located in various Illinois and Iowa cities as well as the Peoria center and a distribution center in Chicago, Illinois.

The Employer's operations are divided into 13 separate departments with separate lines of supervision and department heads who report directly to the Employer's chief executive officer (CEO). Donor Services is the largest department and generally covers the collection of blood, documentation, and training. The department includes the job classifications of the collections employees,⁴ as well as other classifications that the Petitioner does not seek to represent and whose exclusion is not disputed by the Employer.

The collections employees are directly involved in the collection of blood at both fixed sites and at mobile blood drives that are conducted almost daily throughout the Employer's region. A team leader heads each drive. The collections specialists and technicians collect blood products and generally rotate work stations during a blood drive as the majority of these employees are qualified to do all of the tasks on most blood drives. The number of these employees assigned to each site or drive varies in accordance with the anticipated number of donors. The mobile unit assistants (MUAs) only work on mobile drives, although nearly half of the MUAs are also qualified to work as collections specialists and/or technicians.

³ The parties agree that the Employer is a healthcare institution within the meaning of the Act.

⁴ The collections employees include: 40 team leaders, 72 collections specialists I, 7 collections specialists II, 18 collections technicians I, 7 collections technicians II, 27 mobile unit assistants, 1 collections assistant and 3 mobile supply clerks who work in central supply at the Peoria center.

On mobile drives, the collections employees travel to the site in the Employer's vans or their personal vehicles. The equipment and supplies for the blood drive are prepared and packaged by the mobile unit supply clerks and delivered to the site by the MUAs. The MUAs in the Chicago area also prepare and package their equipment and supplies as no mobile unit supply clerks are employed at the Chicago facility.

Upon arrival at the site, the collections employees help the MUA unload equipment and supplies and then set up the site. The site generally includes a registration and history area, the donor room, and the refreshment area or canteen. The collections employees set up the tables, computers, beds for donors, and other equipment and supplies, and perform certain quality control checks to ensure that they have adequate supplies and the equipment is functioning properly.

Once a donor arrives for donation, a Red Cross informational brochure is given to the donor, ideally by a volunteer. The donor is registered and the health history process commences to ensure donor eligibility. During this process, the donor's vital signs are taken and a small blood sample is tested, a series of questions asked, and an electronic blood donation record (EBDR) is created on the laptop computer. The EBDR helps to determine the donor's eligibility to donate and tracks the donation. The donor is then taken to the donor area where his blood is drawn, either by a simple vena puncture or by apheresis.⁵ The blood products are drawn into blood bags and then packed in ice in coolers. After the blood donation, the donor is directed to the canteen for refreshment and rest.

Forms completed during the blood donation process by collections employees are reviewed by the team leader. Another collections employee reviews any paperwork or forms completed by the team leader. At the end of the blood drive, the collections employees

⁵ The donor is hooked up by vena puncture to an apheresis machine which is programmed to draw blood from the patient, segregate plasma, platelets, or red cells, and return to the donor components not donated. Generally, apheresis is conducted at separate mobile blood drives, but apheresis and whole blood donation are performed simultaneously at the Peoria center.

disassemble the drive site and pack up equipment and supplies. The MUA transports the coolers containing the blood units and the completed paperwork to the Laboratory Services department at the Peoria or Chicago facility.

The process of blood collection at fixed sites is essentially the same, except that some equipment and supplies are stored at the site so set up and transportation is simplified. The record is unclear as to the extent of storage at all of these sites. Not all of the fixed sites are staffed every day nor do they have blood drives every day.

Team leaders frequently perform the same functions at blood drives as the other collections employees. While the testimony among team leaders varied, some spend as much as 50 percent of their time performing the same duties as other collections employees, including registering donors, taking health histories, and performing phlebotomies, and they work along side the other collections employees at the same physical location. They have also helped set up and tear down blood drives. When they are not performing these functions, the team leaders apparently spend their remaining time assigning tasks, monitoring work performed by collections employees, and reviewing or completing forms and paperwork. Some of the paperwork filled out by the team leaders is completed jointly with other collections employees. MUAs, for example, assist team leaders in completing paperwork to verify the number of supplies brought to a particular blood drive. Not only do team leaders perform the same job functions as the collections employees when serving as a team leader, but they can also be assigned to blood drives simply as a collections specialist or a collections technician rather than as a team leader.

~~The collections employees, with the exception of the mobile unit supply clerks, are~~
administratively divided into teams and assigned to a team leader. Although team leaders evaluate and disseminate information to their assigned team members, the team leaders do not necessarily work with their assigned team members. The Employer attempts to schedule each team on the same drive at least once a month, but the amount of time the team members work

with their assigned team leader appears to vary widely. One team leader testified that she only worked with some members of her team once or twice per month. Team leaders have an average of four to six collections employees assigned to their team, though some may have as few as one or two. The team leaders report directly to team supervisors whom the parties agree are statutory supervisors.⁶ Team leaders receive the same benefits, are hourly-paid, and are subject to the same personnel policies as the other collections employees.

II. SUPERVISORY STATUS OF TEAM LEADERS

Although the Employer contends that team leader duties have evolved since I determined that they were not supervisors, the Employer's witnesses conceded, and all of the team leaders agreed, that team leader duties have not changed since the prior hearing. However, the Board has refined the analysis to be applied in assessing supervisory status based upon assignment and responsible direction. See *Oakwood Health Care, Inc.*, 348 NLRB No. 37 (2006); *Croft Metals, Inc.*, 348 NLRB No. 38 (2006); and *Golden Crest Healthcare Center*, 348 NLRB No. 39 (2006). As discussed below, I conclude that the team leaders do not have the authority to assign or responsibly direct employees under the *Oakwood* analysis, and that the Employer has failed to establish supervisory status based upon the other statutory indicia.

The traditional test for determining supervisory status used for all employees, including health care employees, is: (1) whether the employee has the authority to engage in, or effectively recommend, any 1 of the 12 criteria listed in Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the employee holds the authority in the interest of the employer. ~~*NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994).~~ The burden of proving supervisory status lies with the

⁶ There are seven team supervisors who monitor and direct the team leaders. Team supervisors are also responsible for assessing, monitoring, and resolving personnel problems in accordance with the Employer's established policies. According to the director of donor services, team supervisors are responsible not only for the team leaders but also for the other collections employees.

party asserting that such status exists. *Oakwood Health Care, Inc.*, supra, slip op. at 9; *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). Supervisory status must be established by a preponderance of the evidence. *Oakwood Health Care, Inc.*, supra, slip op. at 9. Lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003); *Michigan Masonic Home*, 332 NLRB 1409 (2000). "[W]henver the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, supra, slip op. at 5; *Avante at Wilson*, 348 NLRB No. 71, slip op. at 2-3 (2006); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991). Job descriptions, relied upon by the Employer, are only paper authority and are not given any controlling weight by the Board. *Avante at Wilson*, supra, slip op. at 2-3; *Training School at Vineland*, 332 NLRB 1412, 1416 (2000).

The Employer contends that the team leaders are supervisors because they have the authority to assign work; to responsibly direct employees; to discipline, suspend, and terminate employees, and to effectively recommend such actions; to hire and effectively recommend hiring; ~~to reward employees through evaluations leading to wage increases;~~ and promote employees and effectively recommend promotion. The Employer does not contend nor does the record reflect that team leaders have the authority to adjust grievances, transfer, lay off, or recall employees.

A. Assignment of Work

The team leaders' role in assigning work does not demonstrate supervisory status. The Board's recent decisions in *Oakwood* and *Golden Crest Healthcare Center* provide the framework for determining whether the team leaders assign work to collections employees using the requisite degree of independent judgment. In *Oakwood*, the Board explained that assignment means designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties as opposed to discrete tasks. *Oakwood Health Care, Inc.*, 348 NLRB No. 37, slip op. at 4 (2006).

However, the authority to make an assignment, by itself, does not confer supervisory status. To establish supervisory authority, the putative supervisor must also use independent judgment when making such assignments. This means that the individual must exercise authority that is free from the control of others, and make a judgment that requires forming an opinion or evaluation by discerning and comparing data. The touchstone is the degree of discretion exercised by the purported supervisor, not whether the discretion involves technical or professional judgment. In *Oakwood*, the Board recognized the spectrum between situations involving little discretion where there are detailed instructions for the actor to follow from situations where the actor is wholly free from constraints. While judgment is not independent if it is dictated or controlled by detailed instructions, it is independent where the policy allows for discretionary choices. *Id.* Additionally, the judgment must "rise above the merely routine or clerical" for it to be truly supervisory, even if it is made free of control of others and involves ~~forming an opinion by discerning and comparing data.~~ *Id.*, slip op. at 8-9.

Applying this framework, it is first necessary to consider whether the team leaders make assignments, then if so, whether they use independent judgment in making the assignments. As discussed below, I conclude that the team leaders do not assign employees to a place or time and that, to the extent that they give significant overall duties, these assignments do not

require the degree of independent judgment required by Section 2(11) of the Act to support a finding of supervisory status.

Team leaders do not assign employees to a place or time. Schedulers, not the team leaders, assign collections employees to a particular blood drive. Schedulers also determine whether a team leader will be assigned to a blood drive as a team leader or a regular member of the collections staff. Team leaders do not approve schedule changes, nor do they approve time off or overtime. Team leaders do not initial or sign employees' time sheets, nor can they adjust time sheets. Team leaders can assign specific employees to take breaks when donor flow allows and in accordance with the Employer's established policies on break times. Authority to assign breaks in accordance with the Employer's policies requires no more than routine clerical judgment. *Providence Hospital*, 320 NLRB 717, 732 (1996).

The Employer seems to argue that team leaders assign because their decisions can affect the amount of time worked by employees. First, the Employer contends that team leaders can end a blood drive early if all of the scheduled donors have been processed and if the sponsoring facility agrees to close the drive. There is conflicting evidence as to whether team leaders possess this authority; however, even if such authority exists, this decision does not require the discernment or evaluation of data and is not a judgment within the meaning of Section 2(11). Second, the Employer contends that assignment is established because team leaders can extend a drive or allow employees to leave early if the drive is slow or if they are ill. These decisions do not require the exercise of significant discretion. There is no independent judgment required by the decision to extend a drive, as team leaders are instructed to allow donors to donate if they have already signed-in by the closing time. There is no evidence that team leaders can force anyone to leave a blood drive early because of work flow, and supervisory assignment authority is not established where the individual can request, but not require, that a certain action be taken. *Golden Crest Healthcare Center*, 348 NLRB No. 39, slip op. at 4 (2006). Finally, the limited authority to allow employees to go home when work is slow

or when they are ill does not require independent judgment and is insufficient to confer supervisory status.⁷ *Azusa Ranch Market*, 321 NLRB 811, 812 (1996); see also *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000).

The Employer also contends that team leaders assign significant overall duties to team members. I conclude that such assignment does not involve sufficient independent judgment. Initially, I note that the assignment of duties is limited by the qualifications and training of the employees, which is reflected on the scheduling documents provided to the team leaders and/or well-known to the employees and team leaders. While team leaders determine which employee will be assigned to handle EBDR, health histories, or drawing blood, the team leaders' discretion in assigning team members to a particular task is curtailed by the employee's training. If an employee is only trained for health histories, then the employee can only be assigned to set up and work health histories.⁸ Additionally, where there is more than one employee capable of performing given tasks, the qualified employees can, and generally do, rotate such tasks among themselves during the course of the drive. Rotation allows employees to enjoy job variety and maintain skill levels. The authority to assign is only supervisory where the purported supervisor exercises independent judgment or discretion in making assignments based on his or her own assessment of an employee.

In *Oakwood*, the Board cited the charge nurse's assignment of a nurse to a patient as an example of independent judgment in the health care context where the charge nurse weighs the individualized condition and needs of a patient against the skill or special training of available nursing personnel. *Oakwood Health Care, Inc.*, 348 NLRB No. 37, slip op. at 8, 13 (2006). The Board observed that the discretion exercised in "matching a nurse with a patient may have life and death consequences." *Id.*, slip op. at 10-11. Here, team leaders do not conduct any

⁷ One team leader testified that she consulted with her supervisor prior to allowing an employee to leave after he fell asleep on the job due to a medical condition.

⁸ Collections specialists and technicians II can perform health histories and vena puncture, while the technicians I can only perform vena puncture.

individualized assessment of donor needs. While team leaders may consider an employee's experience and assign an employee to a particular task in order to allow an employee to gain additional experience, there is no weighing of skills as contemplated by *Oakwood*. Similarly, the decision whether or not to assign an employee as a "float" does not involve a meaningful exercise of discretion because the team leader cannot assign tasks to an employee who has not been trained. These assignments, made on the basis of well-known and limited skills, are simply a routine matching of skills to requirements. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Clark Machine Corp.*, 308 NLRB 555, 555-556 (1992).

Moreover, as noted above, employees who are trained in more than one area often rotate tasks throughout the blood drive. This rotation severely undermines any argument that the initial assignments require independent judgment. The rotation of team members is facilitated by the fact that the assigned tasks are routine and well-known to the employees. If the assigned duties are so routine that they do not require a purported supervisor to differentiate between employee skill levels, the individual making the assignments will be found to be nonsupervisory. See *Palagonia Bakery Co., Inc.*, 339 NLRB 515, 535 (2003). The evidence does not establish that employees' skills differ significantly among those trained for a particular task or that it is necessary for the team leaders to resolve conflicts or problems with respect to the skills or strengths of the employees trained on a particular task. This lack of specific evidence is construed against the Employer. *Golden Crest Healthcare Center*, 348 NLRB No. 39, slip op. at 5 (2006); *Avante at Wilson*, 348 NLRB No. 71, slip op. at 2-3 (2006); *Michigan Masonic Home*, 332 NLRB 1409 (2000). The authority to assign work, alone, without the use of independent judgment, is not indicative of supervisory authority. *Oakwood Health Care, Inc.*, 348 NLRB No. 37, slip op. at 8-9 (2006); *McGraw-Hill Broadcasting Co., Inc.*, 329 NLRB 454, 456 (1999). In sum, I find that team leaders do not assign work using independent judgment and that the Employer's policies and procedures limit the judgment to such a degree that it falls short of that required to confer supervisory status.

B. Responsible Direction

The team leaders do not use independent judgment to responsibly direct the work of the collections employees. Direction means the putative supervisor has employees working “under” him and the authority to instruct those employees on what work needs to be done and who will do it. *Oakwood Health Care, Inc.*, supra, slip op. at 7. Such direction is not supervisory, however, unless it is also done “responsibly,” i.e., if the putative supervisor is held accountable for the performance of other employees. *Id.* To establish accountability, the party asserting supervisory status has to show both that the putative supervisor has “the authority to take correction action” and can potentially receive “adverse consequences” for the performance errors of other employees. *Id.*, slip op. at 7, 10. For the adverse consequences to establish “responsible direction,” the consequences must flow from the other employees’ performance failures, not from the purported supervisor’s own performance failure. Finally, the purported supervisor must also exercise independent judgment in responsibly directing the work of the employees under him.

Team leaders direct the work and are in charge of blood drives. As discussed above, the team leaders assign employees to perform tasks such as health history, EBDR, and donor room and monitor the employees’ performance of those tasks. They oversee the set-up and break-down of equipment at the beginning and end of the drive. The team leaders are held accountable for their direction to a limited extent. The team leaders are expected to address performance failures of their assigned team members through instruction and/or performance improvement plans (PIPs). The Employer appears to hold the team leaders accountable for the ~~performance errors of their team members but not for the errors of the other collections~~ employees whom they direct on any particular drive. The Employer’s team supervisors evaluate the team leaders in 14 areas, including the quantity, quality, and timeliness of their team’s performance. These ratings are factored into an overall rating, which determines whether or not the team leaders receive a raise. Some team leaders testified, however, that they were not held

accountable for performance errors of their team unless they had failed to properly address a situation.

While the Employer has established direction and accountability, the evidence does not establish supervisory responsible direction because the team leaders do not use independent judgment when directing the work of the collections employees or their team members. As discussed above, the team leader's assignment or direction to employees to perform specific tasks during the course of the blood drive does not require the use of independent judgment. The team leader's authority to act independently while so directing employees is curtailed by the Employer's established policies which delineate how and by whom tasks can be performed. Team leaders cannot deviate from established protocols or standard operating procedures in directing the collections employees to perform certain tasks. Moreover, the collection employees' tasks are limited, repetitive, and well-known to the employees. Thus, the degree of independent judgment is reduced when directing employees in such tasks. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Beverly Health and Rehabilitation Services, Inc.*, 335 NLRB 635, 669 (2001). While the team leaders can also point out tasks that the employees have not performed properly, the ability to make sure the employees perform their duties and to call their attention to a particular task that has not been performed properly, does not require independent judgment. *Beverly Health and Rehabilitation Services, Inc.*, *supra*, at 669; *Evangeline of Natchitoches, Inc.*, 323 NLRB 223, 223-224 (1997).

Although the team leaders are frequently the highest-ranking employees at the blood drive, if problems arise, the team leaders are instructed to call their supervisor, who is always available by phone. Merely notifying a supervisor of an emergency or unusual situation is

insufficient to confer supervisory status.⁹ *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995); *Northcrest Nursing Home*, 313 NLRB 491, 498-499 (1993). Also, having the team supervisor available is further evidence that the team leaders do not exercise independent judgment. *Waverly-Cedar Falls Health Care, Inc.*, 297 NLRB 390, 392 (1989).

Accordingly, I conclude that any judgment used by the team leaders to direct employees is curtailed by the Employer's established policies and procedures, and the tasks are of such a routine and repetitive nature, that the degree of judgment used to direct such tasks falls short of the independent judgment required for supervisory status. *Oakwood Care Center*, 348 NLRB No. 37, slip op. 7, 10 (2006); *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Chevron Shipping Co.*, *supra*.

C. Discipline/Suspension/Termination

The team leaders' limited participation in the disciplinary process does not confer supervisory status on the team leaders. I will not repeat the discussion of disciplinary items addressed in the prior DDE, as I concluded that evidence did not establish supervisory authority, and my analysis of that evidence is unaffected by the *Oakwood* cases. Moreover, all witnesses agreed that the team leader duties have not changed. Accordingly, I shall only address the disciplinary evidence introduced at the hearing in the present case, which, as before, fails to establish that team leaders exercise disciplinary authority that leads to personnel actions without the independent investigation or review by higher management personnel. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002).

The Employer uses a disciplinary form referred to as an employee counseling record that sets forth the following four disciplinary options: documented verbal warning, written warning, suspension, and termination. The disciplinary form itself notes that it must be signed

⁹ Similarly, supervisory status is not established by the fact that a team leader can call an ambulance without prior approval in the event of a donor reaction. A team leader testified that she based her decision to call an ambulance using her common sense and without consulting the Employer's donor reaction policy. Another team leader testified that any employee can call an ambulance during an emergency.

by human resources before being issued to an employee. The Employer's donor services operations supervisor testified that all written discipline must go through the human resources department which ensures the information is accurate and that an investigation has been completed.

At the hearing in the instant case, the Employer presented one employee counseling record involving a written warning for an attendance violation which was signed by a team leader and the senior human resources generalist. However, the team leader who signed the counseling record testified that her team supervisor prepared and provided her with the counseling record, and that the decision to impose the discipline was made at a level above her pursuant to the Employer's attendance policy. This is not supervisory authority. *Franklin Home Health Agency*, supra.

While team supervisors can direct team leaders to prepare and issue employee verbal or written warnings, there is no evidence that the Employer implements any discipline initiated by a team leader without independent investigation and review. A team supervisor testified that he independently investigated employee counseling records issued by a team leader for attendance and non-attendance issues. After receiving a counseling report from a team leader, the team supervisor verified the alleged tardiness against his own spreadsheet and the spreadsheet maintained by the scheduling department. This team supervisor also recalled an incident involving discipline issued by a team leader to a staff member who allegedly made a false accusation. Again, the team supervisor confirmed that both he and the human resources department conducted an independent investigation of the incident. The record does not reflect whether the discipline was ultimately imposed upon the employee. Accordingly, the Employer has failed to establish that team leaders effectively discipline through verbal or written warnings or effectively recommend such action.

The record similarly fails to establish that team leaders possess supervisory authority to send employees home or suspend employees. While the Employer did not present any

documentary evidence, a team supervisor testified about three incidents where team leaders sent employees home for violating the Employer's established policies or procedures. Two of three incidents involved employees sent home for violating the Employer's strict dress code prohibiting blue jeans and body piercing. In these cases, the team supervisor said that both employees had previously been warned to obey the dress code, although the record does not reflect whether the warnings were conveyed by a team leader, a team supervisor, or the human resources department. While the team supervisor discussed the wearing of blue jeans with the employee, the record does not reflect whether the Employer considered the discussion a documented verbal warning. The employee with body piercing did not receive formal discipline, and the team supervisor did not know whether the team leader had consulted with human resources prior to instructing the employee with the body piercing to go home. The third situation involved an employee sent home for falsification of a blood donation record in violation of the Employer's zero tolerance policy. Again, the team supervisor did not know whether the team leader consulted with anyone prior to sending the employee home. However, the team supervisor testified that he investigated the incident and made the ultimate decision to terminate the employee in consultation with the director of collections. On these facts, the record fails to establish that sending an employee home requires independent judgment or automatically results in discipline. Sending employees home for flagrant violations is not indicative of supervisory status because the offenses are such obvious violations of the Employer's established rules that no independent judgment is involved in the decision. *Michigan Masonic Home*, 332 NLRB 1409, 1411, fn. 5 (2000); *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999); *Phelps Community Medical Center*, 295 NLRB 486, 492 (1989).

The Employer also failed to establish that team leaders exercise supervisory authority by terminating employees. The Employer presented two documented instances of team leaders who signed employee counseling records involving terminations for attendance, although one of the employees opted to resign when faced with the prospect of termination. In both cases, the

team leaders who signed the discipline testified that their team supervisors notified them of the underlying attendance violation and instructed them to prepare the counseling record, which was subsequently forwarded to and approved by the human resources department.¹⁰ Both team leaders were simply following the instructions of their supervisors. However, the authority to effectively recommend means that a recommended corrective action is taken without any independent investigation by a higher management authority. *Children's Farm Home*, 324 NLRB 61 (1997).

The Employer presented a team supervisor who testified that a team leader had terminated two employees. I do not accord any weight to her conclusionary testimony. *Avante at Wilson*, 348 NLRB No. 71, slip op. at 2-3 (2006). The team supervisor could not recall specific and critical details. For example, she did not know whether human resources conducted independent investigations regarding the underlying events, though she herself had investigated one of the incidents which involved the failure to report a driving accident. The team supervisor's vague and incomplete testimony does not establish that team leaders can terminate employees on their own authority or that they can effectively recommend termination.

D. Hiring/Interview

While the Employer contends that team leaders have authority to hire and recommend employees for hire, the record evidence is inconclusive, and thus the Employer has not met its burden of proof. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). The Employer has one team supervisor who handles hiring issues. None of the team leaders who testified had participated in the Employer's hiring process, which is initiated by the human resources department. After human resources conducts an initial interview, candidates are then generally interviewed by a panel consisting of two team supervisors, although the team supervisor in charge of hiring often conducts interviews by herself. Team leaders do not

¹⁰ One team leader even testified that she recommended against termination. This testimony was disputed by her team supervisor.

regularly participate in the hiring panels. During the past 14 months, the team supervisor in charge of hiring testified that she had conducted interviews for 6 or 7 classes; that the interviews were generally spread out over 3 or 4 days; and that she typically hired 6 applicants for each class. She further testified that during this time period, two team leaders had participated in the hiring panel on one occasion for two days.

The record fails to establish that team leaders made effective recommendations when they participated in the panel. The team supervisor testified that panel members take turns asking questions, evaluate candidates based upon their answers, and then, in conjunction with the human resources department, decide whether or not to hire the applicant. The panel members do not take a formal vote; past discussions have always resulted in a consensus. However, the record does not establish what would happen if the panel members disagreed, or if human resources disagreed with the panel. The record does not establish the weight that is given to the panel's recommendations by human resources. This lack of specific evidence is construed against the Employer. *Michigan Masonic Homes*, 332 NLRB 1409 (2000). The Employer has failed to establish that team leaders regularly participate in the hiring panel or that their participation constitutes effective recommendation. The mere participation in the hiring process, particularly where higher management participates in the process, absent the authority to effectively recommend hire, is insufficient to establish supervisory authority. *Training School at Vineland*, 332 NLRB 1412, 1417 (2000); *Children's Farm Home*, *supra*, at 64.

E. Evaluation/Reward

The Employer contends that team leaders evaluate employees thereby determining their wage increases and possibly their retention. As discussed below, I find that the Employer has not met its burden of establishing that the team leaders' participation in the evaluation process confers supervisory status. Section 2(11) does not include "evaluation" in its enumeration of supervisory functions. When an evaluation does not, by itself, affect the wages or job status of the employee being evaluated, the individual performing the evaluation is not a statutory

supervisor. *Children's Farm Home*, 324 NLRB 61 (1997). Thus, the Board has found supervisory status where the employer automatically converted the evaluator's numerical rating of another employee into a wage increase, or simply reviewed the evaluation for administrative errors before implementing the wage increase. On the other hand, the Board will not find supervisory status where, as here, the evaluator's superior retains discretion to review, change, and approve of the evaluation or effectuate personnel decisions based on the evaluation. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000).¹¹

The evaluation process begins when human resources notifies team supervisors that a performance evaluation is due on a particular collections employee. The team supervisors then send the performance evaluation to the team leaders to be completed. The team leader then fills out the evaluation form which rates team members in 13 categories, such as timeliness of work which includes timeliness of training, quality of work which includes deferrals and quantity not sufficient (QNS) rates, and punctuality which includes attendance. For these categories, the team leaders incorporate information from their team supervisors, who monitor such performance issues as attendance, QNS ratings, deferral ratings, and missed or late training. The team supervisors send monthly reports to the team leaders containing this information and noting any performance problems with the collections employees. The team leaders then compare this information to a written set of performance standards which the Employer failed to

¹¹ See *Bayou Manor Health Center*, 311 NLRB 955 (1993) (direct correlation between the evaluations completed by the LPNs and the specific merit increases awarded to the CNAs without further review of the evaluations' numerical scores); *Trevila of Golden Valley*, 330 NLRB 1377 (2000) (supervisory status where LPN presented evaluation to employee without any review or prior approval from higher authority); *Hillhaven Kona Healthcare Center*, 323 NLRB 1171 (1997) (supervisory status where no effective review or independent investigation of the basis for evaluations); *Harbor City Volunteer Ambulance Squad*, 318 NLRB 764 (1995) (supervisory status where evaluator played primary role in evaluation process and no evidence that reviewer ever changed a rating or retained ultimate authority over evaluation); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 537 (1999) (not supervisory where evaluator's numbers were reviewed and changed by shift supervisor); *Children's Farm Home*, 324 NLRB 61 (1997) (effective recommendation means recommended action taken without independent investigation by superiors, not simply that recommendation is ultimately followed).

present.¹² With respect to the other categories, such as customer service, interpersonal skills, communication skills, and creativity, the team leaders rely upon their firsthand observation of the team member as well as any information received from other personnel. If the team leader does not regularly work with the employee being evaluated, the team leader must rely upon information provided from the team supervisor or other sources.

There are four possible ratings for each category, with "exceeds expectations" being the highest, then "fully successful," "needs improvement," and finally "clearly unsatisfactory" as the lowest. Employees who receive overall ratings of needs improvement and clearly unsatisfactory do not receive wage increases. Employees who receive fully successful receive a standard wage increase determined by the Employer's national headquarters, and employees who receive the highest rating get an above average raise also determined by national headquarters. Additionally, employees can receive a performance improvement plan (PIP) automatically if they receive less than a fully successful rating in a particular category, and these PIPs are generally for attendance, missed training, high QNS rates, and high deferral rates, which, as noted, are monitored by the team supervisors. The team leaders obtain information for these PIPs from the team supervisors who alert them when these areas become problems for their team members.

After team leaders complete the form, the team supervisors review the evaluations to ensure they conform to written criteria not presented by the Employer, to ensure the evaluations are fair, and to ensure the team leaders have addressed any issues or problems raised by the

¹² At the outset of the hearing, the Employer's attorney indicated that the Employer would introduce these guidelines. In the prior DDE, I noted the Employer's failure to produce these written criteria or guidelines. During the second day of hearing, after repeated testimony referring to written criteria, guidelines, and standards governing the evaluations, the hearing officer requested the introduction of this evidence. The Employer's attorney stated that team leaders were not provided with written instructions regarding how to complete annual evaluations. The attorney's remark is non-responsive and not evidence. Several witnesses in both hearings, including Employer witnesses, referred to the existence of written criteria, guidelines, or performance standards governing the evaluation ratings.

team supervisors.¹³ One of the Employer's witnesses, the donor services supervisor for Chicago, testified that the written criteria also include a requirement that the team supervisors review the evaluations for conformance with the criteria before the evaluation is given back to the team leader to give to the staff member. One team supervisor presented by the Employer also testified that she provided guidance to her team leaders on what overall rating to give an employee, particularly when the ratings for the individual categories differed. Team supervisors can and do change ratings and direct team leaders on what to address in the evaluations. Further, employees, even team leaders, can appeal their evaluations to higher management, including to the CEO, who can then change the evaluation. All evaluations are signed by the team leader and the team supervisor.

None of the evaluations presented by the Employer contains the highest rating of exceeds expectations or the lowest rating of clearly unacceptable. One collections employee and his team leader testified his team leader wanted to give him a rating of exceeds expectations but the team supervisor would not allow it. The team supervisor involved testified she did give "guidance" to the team leader on what the overall rating should be for this employee. The vast majority of employees receive ratings of fully successful and receive standard raises determined by headquarters. Indeed, all of the evaluations introduced at the hearing in this case contained fully successful overall ratings. Only a few evaluations from the prior record contained overall ratings of needs improvement and most of these evaluations were signed by other management officials in addition to the team supervisor, including one signed by an interim CEO. The CEO testified that team leaders do not have the sole authority to

¹³ At the hearing in this case, the team leaders unanimously testified that they submitted evaluations to their team supervisor for review. In the prior record, one team leader said that she gave evaluations to employees before giving the evaluations to her team supervisor to review; this testimony was contradicted by the testimony from her team supervisor claiming she reviewed the evaluations before the team leaders presented them to the employees. Another team leader had stated she gave a performance evaluation to an employee first before giving it to her team supervisor to review and was later instructed by her team supervisor that the evaluations are to go to the team supervisor first for approval before being given to the employee.

determine wages, nor do they have the “final say” on what an individual’s wage increase will be. The CEO stated that while the evaluations filled out by the team leaders are a “strong” recommendation on pay raises, the employee would not get a pay increase solely on such recommendation without “approval” at the second level of review by the team supervisor. There is no evidence of an employee being retained, terminated, or promoted on the basis of the performance evaluations.

On these facts, the Employer has failed to establish that there is a direct link between the team leaders’ evaluations and any wage increases. An evaluation is not effective unless there is a direct correlation between the evaluator’s action and the resulting change in job status. Here, the Employer retains substantial control and authority over the evaluation process; the evaluation is not a product of a collaborative effort between equals. The team supervisors review the completed evaluations to ensure they do not deviate from the established written criteria and to ensure the team leader has addressed all the performance issues the team leader brought to their attention. Team supervisors direct team leaders to correct any deficiencies in the evaluations. Even the CEO characterized the evaluations as “suggestions” that must be approved by a higher level of management who can and have changed ratings. In these circumstances, the evaluations do not constitute effective recommendations on wage increases where they are subject to review and approval by higher management officials. *Children’s Farm Home*, 324 NLRB 61 (1997). The Board has consistently held that assessing an employee’s ability to perform the required work using pre-established standards or guidelines does not constitute an effective recommendation to hire or promote, nor does it otherwise establish supervisory status. *Aardvark Post*, 331 NLRB 320, 321 (2000); *Hogan Mfg.*, 305 NLRB 806, 807 (1991).

The Employer also emphasizes that team leaders have authority to issue PIPs. However, this does not confer supervisory status as receiving a PIP does not prevent an employee from receiving a fully successful rating and therefore a pay increase. While an

employee's failure to improve could lead to a needs improvement rating in the annual evaluation, this is subject to the team supervisor's review and approval. Further, the Employer has failed to establish that team leaders use independent judgment to issue PIPs. While one team leader testified that she determined the length of a PIP issued for attendance, she received the information regarding the absences from her team supervisor and discussed the issue with the team supervisor prior to issuing the PIP. While there is no evidence of an employee receiving discipline as a result of a PIP, one team leader testified that her team supervisor instructed her to issue a PIP to an employee for excessive lost units and to include language in the PIP regarding the potential for discipline unless the employee's performance improved. The human resources manager testified someone in human resources reviews and signs PIPs, though the record fails to reflect the purpose behind such review. In summary, the record fails to establish that team leaders use independent judgment when issuing PIPs, or that PIPs automatically lead to a change in job status without higher review.

Similarly, the team leaders' completion of competency evaluations does not reflect the use of supervisory authority. The record reflects some evidence that team leaders complete competency evaluations on employees which are also reviewed by team supervisors. The Employer, however, failed to present any of the competency evaluations filled out by the team leaders, which lack of evidence is construed against the Employer. *Michigan Masonic Home*, 332 NLRB 1409 (2000). Further, as noted above, determining an employee's competency, or assessing an employee's ability to perform the required work using pre-established standards or guidelines, does not constitute an effective recommendation to hire or promote, nor does it otherwise establish supervisory status. *Aardvark Post*, *supra*; *Hogan Mfg.*, *supra*.

F. Promotion

The Employer contends that team leaders have authority to effectively recommend employees for training classes, which, if successfully completed, result in a wage increase. For example, a collections technician must receive training in donor health history classes in order

to progress to the collections specialist position. While the evidence is conflicting, the Employer says that employees cannot receive the training without a team leader's recommendation.¹⁴ In any event, this is akin to a more experienced lead employee submitting to higher authority their opinions on the abilities of the employee, an action that does not confer supervisory status. For example, the Board has consistently found that such assessment of an applicant's technical ability to perform required work does not constitute the effective recommendation to hire. *Aardvark Post*, supra; *The Door*, 297 NLRB 601 (1990). Further, the candidate must successfully complete the required training before being eligible for an actual promotion.

The Employer also contends that team leaders can recommend that a collections employee be promoted to a team leader. However, the Employer's witness testified that the team leader's recommendation is not a requirement and the record does not establish that the Employer follows such recommendation without making an independent investigation. The fact that a promotion to team leader might be made based on a team leader's input does not constitute effective recommendation. *Consolidated Services, Inc.*, 321 NLRB 845 (1996).

G. Secondary Indicia

The Employer presented evidence of secondary indicia, such as ratio, attendance at meetings and retreats, input on policies, and taking leadership classes. While the Board has examined other secondary factors not set forth in Section 2(11) of the Act, these factors, without more, are insufficient to establish supervisory status. *Ken-Crest Services, Inc.*, 335 NLRB 777, 779 (2001). Thus, attendance at meetings, retreats, and leadership classes are, at most, ~~secondary indicia which, in the absence of statutory indicia, are insufficient to establish~~ supervisory status. *Auto West Toyota*, 284 NLRB 659, 661 (1987).

¹⁴ One team leader testified that she was not consulted for a recommendation with respect to two employees on her team who attended health history training. Similarly, another employee successfully completed apheresis training that resulted in a wage increase without his team leader's recommendation.

Accordingly, I conclude that the Employer has failed to meet its burden of establishing that team leaders are supervisors. The case cited by the Employer in support of supervisory status, *Super X Drugs of Texas, Inc.*, 217 NLRB 1103 (1975), is clearly distinguishable. The pharmacists in question had the authority to suspend employees, to grant time off or refuse to grant time off, to use independent judgment to assign specific tasks to specific employees, and to determine when to call in replacements for absent employees, and to sign and approve payroll, none of which authority is possessed by the team leaders, as noted above. Therefore, I find that the team leaders are not supervisors and I shall include them in the petitioned-for unit.

III. THE COLLECTION SUPPORT SPECIALISTS

The record does not establish that the collection support specialists share a compelling community of interest with the unit employees, and I shall not compel their inclusion in the unit over the Petitioner's objections. There are currently two collections support specialists at the Peoria center who perform different duties. One of the collections support specialists is primarily responsible for manning the "TS" or "201 line," which the team leaders call if problems or questions arise during a blood drive, such as questions about donor eligibility or if the drive needs to end early or late. She works in a suite with schedulers and team supervisors and reports to the donor services manager. The other collection support specialist works primarily with the Central Supply department and handles issues relating to ordering, organizing, and packing supplies, although she occasionally answers the 201 line.

The collections support specialists do not regularly attend blood drives and are not assigned to a collections team. The record suggests that collection support specialists share as ~~great or perhaps greater~~ community of interest with the other Donor Services employees whom the Employer agrees are appropriately excluded, and who also share some community of

interest with the unit employees.¹⁵ For example, the specialist in charge of the 201 line works with scheduling employees when staffing issues arise and with the problem management specialist when dealing with problem management reports. The limited record fails to establish the existence of a compelling community of interest that would require me to include the collections support specialists in the unit. See *Esco Corp.*, 298 NLRB 837, 841 (1990). Accordingly, I shall not include the collections support specialists in the unit found appropriate here.

IV. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, part-time and per diem¹⁶ collections specialists I, collections specialists II, collections technicians I, collections technicians II, mobile unit assistants I, mobile unit assistant I/collections specialists I, mobile unit assistant I/collections

¹⁵ The excluded Donor Services employees include schedulers, training specialists, education coordinators, documents control specialists, problem management specialists, and administrative assistants. The prior DDE sets forth a detailed description of their duties.

¹⁶ Per diem employees who work an average of 4 hours per week in the 13-week period preceding the eligibility cut-off date are eligible to vote. *Davison-Paxon*, 185 NLRB 21, 24 (1970); *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990).

technicians I, mobile unit assistants I/CTI-HH, mobile unit assistants II, mobile unit assistant II/collections specialists I, mobile unit assistants II/CTI-HH, mobile unit supply clerks, collections assistant, and team leaders employed by the Employer in its Donor Services department, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act and all other employees.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by AFSCME (The American Federation of State, County, and Municipal Employees) Council 31. The date, time, and place of the election will be specified in the notice of election that the Board's Subregional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in Subregion 33, Hamilton Square, Suite 200, 300 Hamilton Boulevard, Peoria, Illinois 61602, on or before **May 11, 2007**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (309) 671-7095. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact Subregion 33.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting

requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. E-FILING

In the Subregional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Subregional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board website at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **May 18, 2007**. The request may **not** be filed by facsimile.

Dated: May 4, 2007
at: St. Louis, Missouri

/s/[Ralph R. Tremain]
Regional Director, Region 14
National Labor Relations Board
Subregion 33